

# **WELSH LANGUAGE (WALES) MEASURE 2011**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 1 – Official status of the Welsh Language***

8. This section makes provision about the official status of the Welsh language in Wales.
9. Subsection (1) states that the Welsh language has official status in Wales.
10. Subsection (2) provides that, without prejudice to the general principle of subsection (1), legal effect is given to the official status of the Welsh language by the enactments about: duties on bodies to use the Welsh language; the treatment of the Welsh language no less favourably than the English language; the validity of the use of the Welsh language; the promotion and facilitation of the use of the Welsh language; the freedom of persons wishing to use the Welsh language to do so with one another; the creation of the Welsh Language Commissioner and other matters relating to the Welsh language.
11. Subsection (3) refers to examples of the enactments which give legal effect to the official status of the Welsh language.
12. Subsection (4) states that the Measure does not affect the status of the English language in Wales.

#### ***Section 2 – The Welsh Language Commissioner***

13. This section establishes the office of the Commissioner and gives effect to Schedule 1 which makes further provision about the Commissioner. The Commissioner is appointed by the First Minister.

#### ***Section 3 – The Commissioner’s principal aim***

14. This section makes provision about the Commissioner’s principal aim in exercising his or her functions. That aim is to promote and facilitate the use of the Welsh language. Subsection (2) makes provision about the actions which the Commissioner must undertake in exercising functions in accordance with the principal aim, and subsection (3) lists the principles to which the Commissioner must have regard when exercising functions in accordance with the principal aim.

#### ***Section 4 – Promoting and facilitating the use of Welsh and treating Welsh no less favourably than English***

15. This section outlines the Commissioner’s general functions. Subsection (1) provides that the Commissioner may do anything that he or she thinks appropriate to promote the use of the Welsh language, facilitate the use of the Welsh language and work towards ensuring that the Welsh language is treated no less favourably than the English language.

### ***Section 5 – Production of 5-year reports***

16. This section places a duty upon the Commissioner to produce a report on the position of the Welsh language. A report must be produced in relation to each reporting period as defined in subsection (5). The first report published after each census is to include an analysis of the results of the census in relation to the Welsh language.

### ***Section 6 – 5-year reports: supplementary***

17. This section makes additional provision about the production and publication of the 5-year reports.

### ***Section 7 – Inquiries***

18. This section provides the Commissioner with the power to conduct inquiries into any matter relating to any of his or her functions. This general power of inquiry is subject to subsections (3) to (5). Subsection (9) gives effect to Schedule 2 which makes further provision about inquiries.

### ***Section 8 – Judicial review and other legal proceedings***

19. This section enables the Commissioner to institute or intervene in legal proceedings in England and Wales if it appears to the Commissioner that the proceedings are relevant to a matter in respect of which he or she has a function.
20. In addition to providing that the Commissioner’s power to institute or intervene in legal proceedings is subject to any limitations and restrictions imposed by legislation or rules of court, subsection (2) makes clear that subsection (1) does not, of itself, create a cause of action.

### ***Section 9 – Legal assistance***

21. This section provides the Commissioner with the power to provide an individual with assistance if that person is, or may become, a party to actual or possible legal proceedings in England and Wales that are relevant to a matter in respect of which the Commissioner has a function. “Assistance” for the purposes of this section includes, but is not limited to, legal advice; legal representation and facilities for the settlement of a dispute.

### ***Section 10 – Legal assistance: costs***

22. In circumstances where the Commissioner has assisted an individual under section 9 in relation to legal proceedings, and that individual becomes entitled to some or all of his or her costs in the proceedings, this section ensures that the Commissioner’s expenses in providing the assistance are charged on sums paid to the individual by way of costs. Such sums may be enforced as a debt due to the Commissioner.

### ***Section 11 – Powers***

23. This section provides the Commissioner with a general power to do anything that he or she thinks is appropriate in connection with any of his or her functions including but not limited to those things listed in subsection (2). Subsection (2) is subject to subsections (4) to (6).

### ***Section 12 – Staff***

24. This section makes provision about the Commissioner’s staff which must include a Deputy Commissioner.

***Section 13 – Exercise of Commissioner’s functions by staff***

25. This section provides the Commissioner with the power to delegate any or all of his or her functions to a member of staff. The section also refers to those situations where the Commissioner’s functions are exercisable by the Deputy Commissioner.

***Section 14 – Complaints procedure***

26. This section places a duty upon the Commissioner to establish a procedure for the investigation of complaints about acts or omissions relating to the exercise of the Commissioner’s functions.

***Section 15 – Seal and validity of documents***

27. This section deals with the execution of documents by the Commissioner and their use in evidence.

***Section 16 – Welsh Ministers’ power of direction***

28. This section provides the Welsh Ministers with a qualified power to direct the Commissioner and places a duty on the Commissioner to comply with any such directions. Directions cannot be given in relation to the giving of a compliance notice to a person by the Commissioner, the enforcement of standards by the Commissioner or in respect of the Commissioner’s functions contained in that Part of the Measure which makes provision in relation to the freedom to use Welsh.

***Section 17 – Consultation***

29. Where, in connection with the exercise of a function, the Commissioner consults the Advisory Panel or any other person in accordance with the Measure, the Commissioner must have regard to the consultation in exercising the function.

***Section 18 – Annual reports***

30. This section requires the Commissioner to produce reports in relation to each financial year.

***Section 19 – Annual reports: supplementary***

31. This section makes additional provision about the production and publication of the Commissioner’s annual reports.

***Section 20 – Working jointly with the Public Services Ombudsman for Wales***

32. Where the Commissioner undertakes or is entitled to undertake a standards enforcement investigation (as defined) the subject matter of which could also be investigated by the Public Services Ombudsman for Wales, if the Commissioner thinks it appropriate, he or she must inform and consult the Ombudsman. The Commissioner and the Ombudsman may then co-operate with each other by doing any or all of the things listed in subsection (3).

***Section 21 – Working collaboratively with ombudsmen, commissioners etc***

33. This section applies if it appears to the Commissioner that the subject matter of a standards enforcement investigation (as defined) that the Commissioner undertakes, or is entitled to undertake, relates to or raises a matter which could be investigated by the Public Services Ombudsman for Wales, the Children’s Commissioner for Wales, the Commissioner for Older People in Wales or the Commission for Equality and Human Rights (all bodies which fall within the definition of “ombudsman” in subsection (6)). In such a case the Commissioner must, if he or she thinks it appropriate, consult the relevant ombudsman about that matter.

34. Where the Commissioner undertakes his or her investigation and the relevant ombudsman also undertakes an investigation into the matter within that ombudsman's remit, they may do any or all of the things listed in subsection (4).
35. Subsection (7) provides Welsh Ministers with the power to amend the definition of "ombudsman" in subsection (6) by adding a person, omitting a person or changing a description of a person.
36. This section introduces Schedule 3.

### ***Section 22 – Power to disclose information***

37. This section prevents the Commissioner from disclosing information obtained in the exercise of any of his or her functions unless the disclosure is authorised by subsection (2).

### ***Section 23 – Advisory Panel***

38. This section makes provision about the appointment of the Advisory Panel and gives effect to Schedule 4 which makes further provision about its members.

### ***Section 24 – Consultation***

39. This section provides the Commissioner with the power to consult the Advisory Panel on any matter.

### ***Section 25 – Duty to comply with a standard***

40. This section requires a person (referred to here as "P") to comply with a standard of conduct if, and for as long as, the six conditions listed in subsections (2) to (7) are met.
  - Condition 1 is that P is liable to be required to comply with standards. Provision about persons liable to be required to comply with standards is made in Chapter 3.
  - Condition 2 is that the standard is potentially applicable to P. Provision about the classes of standard that are potentially applicable is made in Chapter 4.
  - Condition 3 is that the standard is specifically applicable to P. Provision about standards that are specifically applicable is made in Chapter 5.
  - Condition 4 is that the Commissioner has given a compliance notice to P. Provision about compliance notices is made in Chapter 6.
  - Condition 5 is that the compliance notice requires P to comply with the standard (see Chapter 6).
  - Condition 6 is that the compliance notice is in force (see Chapter 6).
41. The duty placed on P to comply with a standard is subject to the provisions of the compliance notice given to P (see Chapter 6).

### ***Section 26 – Welsh Ministers to specify standards***

42. This section allows the Welsh Ministers to specify one or more service delivery standards, policy making standards, operational standards, promotion standards or record keeping standards.
43. Each of these standards is separately defined in sections 28 to 32.

### ***Section 27 – Specification of standards: supplementary provision***

44. This section allows the Welsh Ministers to specify a record keeping standard for complaints concerning the Welsh language other than complaints concerning a person's

compliance with other standards in certain circumstances. It also permits the Welsh Ministers to make regulations specifying different standards of the kind referred to in section 26 in relation to different conduct.

### ***Section 28 – Service delivery standards***

45. This section defines “service delivery standard” to mean a standard of conduct that relates to a service delivery activity and is intended to promote or facilitate the use of the Welsh language, or to work towards ensuring that the Welsh language is treated no less favourably than the English language, when that activity is carried out.
46. “Service delivery activity” is defined in subsection (2) to mean a person delivering services to another person or dealing with any other person in connection with delivering services to that other person or to a third person.

### ***Section 29 – Policy making standards***

47. This section defines “policy making standard” to mean a standard that relates to a policy decision and which is intended to secure, or to contribute to securing, one or more of the following results:
- that the person making the policy decision considers what effect, if any, the policy decision would have on the opportunities for other persons to use the Welsh language, or treating the Welsh language no less favourably than the English language;
  - that the person making the policy decision considers how it could have positive effects or increased positive effects on opportunities for other persons to use the Welsh language, or treating the Welsh language no less favourably than the English language;
  - that the person making the policy decision considers how the decision could be made so that it doesn’t have or reduces any adverse effects which the policy decision would have on opportunities for other persons to use the Welsh language, or treating the Welsh language no less favourably than the English language.
48. In this section positive or adverse effects can mean those experienced directly or indirectly.
49. A “policy decision” for the purpose of this Part means a decision by the person about the exercise of the person’s functions, or about the conduct of the person’s business or other undertaking.

### ***Section 30 – Operational standards***

50. This section defines “operational standard” to mean a standard that relates to the relevant activities of a person (referred to here as “A”) and is intended to promote or facilitate the use of the Welsh language:
- by A in carrying out A’s relevant activities;
  - by A and another person in dealings between them in connection with A’s relevant activities; or
  - by a person other than A in carrying out activities for the purposes of, or in connection with, A’s relevant activities.
51. “Relevant activities” are defined to mean functions, or a business or other undertaking. A reference to the carrying out of relevant activities is to the exercise of functions, or about the conduct of a business or other undertaking.

### ***Section 31 – Promotion standards***

52. This section defines “promotion standard” to mean a standard (relating to any activity) that is intended to promote or facilitate the use of the Welsh language more widely.

### ***Section 32 – Record keeping standards***

53. This section defines “record keeping standard” to mean a standard relating to the keeping of records about other specified standards and records about complaints concerning a person’s compliance with other standards or other complaints concerning the Welsh language. “Specified standard” means a standard specified by the Welsh Ministers in regulations under section 26(1).

### ***Section 33 – Persons liable to be required to comply with standards***

54. A person (“P”) is open to being required to comply with standards if P:
- falls within column (2) of the table in Schedule 5; and also within column (1) of the table in Schedule 6, or within a category of persons listed in those columns, or
  - falls within column (2) of the table in Schedule 7 and is also within one of the descriptions in column (1) of the table in Schedule 8.

### ***Section 34 – Persons who are within Schedules 5, 6, 7 and 8***

55. This section defines when a person falls within Schedules 5, 6, 7 or 8.
56. The persons and bodies in the Schedule 6 table (public bodies etc) have standards listed next to their names and are open to be required to comply with one or some of those standards. Persons and bodies listed in the Schedule 8 table (other bodies) have specified services listed next to their names, and are open to be required to comply with service delivery and record keeping standards in respect of those services. Simply being listed in these Schedules does not impose a duty to comply with standards.
57. The Welsh Ministers may make regulations stating which standards are to apply to which persons or bodies, and authorising the Commissioner to issue a compliance notice. Standards are imposed on a person or body when the Commissioner issues a compliance notice (section 44) requiring the person or body listed in the tables in Schedule 6 or 8 to comply with the standard or standards as set out in the notice: the person or body then becomes under a duty to comply.
58. The tables in Schedule 5 (categories of person that may be added to Schedule 6) and Schedule 7 (categories of person that may be added to Schedule 8) give descriptions of persons or bodies that may be brought within the ambit of Schedules 6 or 8.
59. Persons or bodies falling within the category of persons in Schedule 5 may be added to Schedule 6, and persons falling within the descriptions of persons in Schedule 7 may be added to Schedule 8. This allows for the number of persons or bodies listed in Schedules 6 and 8 who may be open to comply with standards to be increased over time however, as explained above, persons will not become under a duty to comply with standards until the Commissioner gives them a compliance notice.
60. This section also provides that a change in the name of a person specified in Schedules 6 or 8 does not affect the operation of this Measure in relation to that person.

### ***Section 35 – Amendment to persons and categories specified in Schedules 6 and 8***

61. This section provides the Welsh Ministers with an order making power to amend the tables in Schedules 6 and 8 in accordance with this section.

***Section 36 – Persons within Schedule 6***

62. This section applies to a person (“P”) who is within column (1) of the table in Schedule 6. It provides that those standards which appear in column (2) of P’s entry in the Schedule 6 table are the type of standards which the Welsh Ministers could apply to P in regulations.

***Section 37 – Persons within Schedule 8***

63. This section applies to a person (“P”) who is within column (1) of the table in Schedule 8, and provides that the only two types of standard which Welsh Ministers could apply to P are –
- certain service delivery standards; or
  - certain record keeping standards.

***Section 38 – Amendment of standards potentially applicable***

64. The Welsh Ministers may, by order, amend the tables in Schedules 6 and 8 in accordance with this section.

***Section 39 – Standards that are specifically applicable***

65. A standard will apply to a person (“P”) if the Welsh Ministers provide in regulations that the standard applies to P, and authorise the Commissioner to give P a compliance notice requiring P to comply with the standard. Chapter 6 makes provision about compliance notices.

***Section 40 – Duty to make standards specifically applicable***

66. This section imposes a duty upon the Welsh Ministers to secure that the regulations made under section 39 provide that the standard in question applies to one or more persons.

***Section 41 – Different standards relating to particular conduct***

67. If the Welsh Ministers specify a number of standards in relation to particular conduct, this section enables regulations under section 39 to provide for one or more of the following:
- for one standard to be specifically applicable to one person, to two or more persons, or to a group of persons;
  - for two or more standards to be specifically applicable to one person, to two or more persons, or to a group of persons;
  - for different standards to be specifically applicable to different persons.

***Section 42 – Duty to make certain service delivery standards specifically applicable***

68. In the event that regulations made under section 39 provide for any service delivery standard to apply to P (and that the Welsh Ministers have made regulations under section 26(1) specifying such a standard), this section requires the Welsh Ministers to ensure that those regulations provide for service delivery standards relating to all of the activities listed in Schedule 9 to apply (if, and to the extent that, P carries out those activities).
69. However under subsection (3) if, or to the extent that

- a standards report under section 64 indicates that it would be unreasonable or disproportionate for service delivery standards to be specifically applicable to P in relation to that activity; or
- the Welsh Ministers think it would be unreasonable or disproportionate for service delivery standards to be specifically applicable to P in relation to that activity

then regulations under section 39 need not secure that service delivery standards are specifically applicable to P in relation to an activity specified in Schedule 9. This section also enables regulations made under section 38 to provide for other service delivery standards to apply to P.

### ***Section 43 – Limitation on power to make standards specifically applicable***

70. In accordance with this section, regulations made by the Welsh Ministers under section 39 may only provide that a standard applies specifically to a person or to a group of persons, if the standard belongs to the type of standard with which that person or each member of the group could potentially have to comply (see Chapter 4). The Welsh Ministers may not make regulations providing for a standard to be specifically applicable to a Minister of the Crown unless the Secretary of State consents to that provision.

### ***Section 44 – Compliance notices***

71. A “compliance notice” is defined by this section to mean a notice given by the Commissioner to a person (“P”) which sets out or refers to one or more of the standards specified by the Welsh Ministers in regulations made under section 26(1), and requires P to comply with the standard or standards set out or referred to.
72. A compliance notice may require a person to comply with a particular standard in some circumstances, but not in other circumstances and/or in some area or areas, but not in other areas.
73. Where regulations produced by the Welsh Ministers under section 39 provide that two or more standards are applicable to a particular person in relation to particular conduct a compliance notice may require the person to:
- comply with only one of the standards, or
  - comply with different standards at different times, in different circumstances (whether at the same time or different times) or, in different areas (whether at the same time or different times).

### ***Section 45 – Giving compliance notices to any person***

74. The Commissioner may only give P a compliance notice if P is open to being required to comply with standards in accordance with Chapter 3.
75. A compliance notice given to P may set out, or refer to, a particular standard only if the standard:
- is a type of standard with which P could potentially be required to comply (in accordance with Chapter 4); and
  - is specifically applicable to P (in accordance with Chapter 5).
76. Where P is given a compliance notice by the Commissioner, the Commissioner must give P a copy of any relevant code of practice issued under section 68 and inform P of the right of challenge under Chapter 7.
77. Provision about giving compliance notices to contractors is made in section 48.



### ***Section 46 – Imposition days***

78. Each standard specified in a compliance notice must state the imposition day(s). The imposition day, or the earliest of the imposition days, must fall after the end of 6 months beginning with the day on which the compliance notice is given.
79. In relation to a standard, “imposition day” means:
- the day from which a person is to be required to comply with the standard, or
  - the day from which a person is to be required to comply with the standard in a respect.

### ***Section 47 – Consultation***

80. This section requires the Commissioner to consult a person before giving that person a compliance notice. This requirement does not apply if the Commissioner is satisfied that the person has already been consulted, or given the opportunity to be consulted, in connection with a standards investigation (see Chapter 8). If a person fails to take part in a consultation, this will not prevent the Commissioner from giving that person a compliance notice.

### ***Section 48 – Giving compliance notices to contractors***

81. This section applies to a compliance notice given to a person falling within column (2) of the table in Schedule 7 (“qualifying person”) who provides the public with services (“the relevant services”) provided under an agreement, or in accordance with arrangements, made with a public authority (“the relevant contract”). Such a notice can only set out, or refer to, a particular standard in relation to the provision of the relevant services under the relevant contract if the conditions in subsection (2) are met. The requirement for the qualifying person to comply with the particular standard must be the same as or no greater than the requirement for the public authority to comply with the standard.

### ***Section 49 – Varying compliance notices***

82. This section allows the Commissioner to vary any compliance notice.

### ***Section 50 – Revoking compliance notices***

83. This section allows the Commissioner to revoke any compliance notice.

### ***Section 51 – When compliance notice is in force***

84. A compliance notice given to P is in force from the day when the Commissioner gives the notice to P until such time as it is revoked.

### ***Section 52 – Publicising compliance notices***

85. The Commissioner must comply with the requirements for making copies of compliance notices accessible and available for inspection imposed by this section.

### ***Section 53 – Cessation of requirement to comply with standard***

86. As soon as practicable after P ceases to be under a duty to comply with a standard due to the fact that one or more of the conditions in section 25 are not satisfied or the standard ceases to be specified by the Welsh Ministers under section 26(1), the Commissioner must ensure that any compliance notices relating to P which remain in force reflect this change.

### ***Section 54 – Challenging future duties***

87. Where a person (“P”) has been given a compliance notice which requires P to comply with a standard as from a future imposition day, P is allowed to apply to the Commissioner for a determination as to whether or not the requirement to comply with a standard, or to comply with it in a certain respect, is unreasonable or disproportionate.

### ***Section 55 – Challenging existing duties***

88. Where P is in receipt of a compliance notice which already requires P to comply with a standard, this section allows P to apply to the Commissioner for a determination as to whether or not the requirement for P to comply with a standard, or to comply with it in a certain respect, is unreasonable or disproportionate.
89. The Commissioner may refuse to accept an application under this section if he or she is satisfied that there has been no material change in P’s circumstances since the day on which P was first required to comply with that standard (wholly or in a particular respect) or since the day that the Commissioner determined the relevant question on a previous application under this section (if a previous application has been made).
90. In this section, “relevant question” means the question to which an application under this section relates of whether the requirement to comply with the standard, or to comply with the standard in a particular respect, was unreasonable or disproportionate.

### ***Section 56 – Applications to the Commissioner***

91. This section makes provision about the form and content of applications to the Commissioner which seek to challenge future and existing duties under section 54 or 55.

### ***Section 57 – Determining an application***

92. This section makes provision about the determination of any application to the Commissioner under section 54 or any application that the Commissioner does not refuse to accept under section 55. The onus is placed on P to show that the requirement for P to comply with the standard (wholly or in a particular respect) is unreasonable or disproportionate.
93. If the Commissioner determines in favour of P’s application the Commissioner must either (a) revoke the compliance notice (b) revoke the compliance notice and give a new compliance notice or (c) vary the existing compliance notice.

### ***Section 58 – Right of appeal***

94. If the Commissioner notifies P of a determination that the requirement challenged by P is not unreasonable or disproportionate this section allows P to appeal to the Tribunal for a determination as to whether or not that requirement is unreasonable or disproportionate.
95. Subject to subsection (4), an appeal under this section must be made within 28 days beginning with the day when the Commissioner notified P of his or her determination of the application.
96. The Tribunal must notify both P and the Commissioner of its determination of an appeal made under this section.
97. If the Tribunal determines that the requirement is unreasonable or disproportionate, the Tribunal must either (a) revoke the compliance notice (b) revoke the compliance notice and give a new compliance notice or (c) vary the existing compliance notice. The right of appeal is subject to Tribunal Rules, which can make provisions about bringing an appeal under this section.

### ***Section 59 – Appeals from Tribunal***

98. Where the Tribunal has decided an appeal under section 58, the Commissioner or P may, with the permission of the Tribunal or High Court, appeal to the High Court on a question of law arising out of the Tribunal’s decision.
99. If the High Court finds that the Tribunal has made an error on a point of law, it may set aside the decision of the Tribunal. If the case is set aside, the High Court must either send the case back to the Tribunal with directions for its reconsideration or re-make the decision.
100. This section makes provision about the directions that the High Court may give to the Tribunal and provides that when re-making a decision, the High Court may make any decision which the Tribunal could make, and may make findings of fact as the it thinks appropriate.
101. An application for permission to appeal must be made to the Tribunal or High Court within 28 days of the Tribunal notifying the applicant of its determination of the appeal. However the Tribunal or High Court has the discretion to allow appeals to be made after the 28 days if they are satisfied that there is a good reason for failing to apply for permission in time, or if there is a good reason for the delay in applying for permission.

### ***Section 60 – Postponement of imposition of duty***

102. If P applies to the Commissioner to determine whether or not the requirement to comply with a standard, or comply with the standard in a particular respect, is unreasonable or disproportionate, P need not comply with that standard or comply with it in that respect, unless and until the Commissioner has made a determination and P’s rights of appeal are exhausted.

### ***Section 61 – Standards investigations***

103. A “standards investigation” means an investigation carried out in relation to a person (“P”) for the purpose of determining one or more of the questions in paragraphs (a) to (e) of subsection (1).
104. A particular standards investigation may be carried out in relation to a particular person or a group of persons.

### ***Section 62 – Power to carry out standards investigations***

105. This section empowers the Commissioner to carry out standards investigations subject to having provided each relevant person with an exploration notice at least 14 days before beginning the investigation.
106. An “exploration notice” is a written notice which states that the Commissioner is proposing to carry out a standards investigation and specifies the subject matter of that investigation.
107. A “relevant person” means:
  - in the case of a standards investigation relating to a particular person, that person; and
  - in the case of a standards investigation relating to a group of persons, such persons who appear to the Commissioner to be members of the group, and persons to whom the Commissioner thinks it appropriate to give exploration notices.

### ***Section 63 – Requirements when carrying out standards investigations***

108. The Commissioner, in carrying out a standards investigation, must have regard to the need to secure that requirements for persons to comply with standards are not unreasonable or disproportionate.
109. Subsection (2) makes provision about the matters to be considered and the conclusions that must be reached in specified circumstances where the Commissioner decides, or is directed, that a standards investigation is to consider whether service delivery standards should be specifically applicable to a person.
110. In carrying out a standards investigation, the Commissioner must consult each relevant person, the Advisory Panel and the public (unless, or to the extent that the Commissioner considers it is inappropriate to consult the public).
111. The failure of a person to participate in the Commissioner’s consultation does not prevent the Commissioner from carrying out the standards investigation.
112. A “relevant person” means:
  - in the case of a standards investigation relating to a particular person, that person; and
  - in the case of a standards investigation relating to a group of persons, such persons who appear to the Commissioner to be members of the group, and persons whom the Commissioner thinks it appropriate to consult.

### ***Section 64 – Standards report***

113. After carrying out a standards investigation the Commissioner must produce a standards report that sets out the conclusions of the standards investigation and the Commissioner’s reasons for reaching those conclusions.
114. If an investigation concludes that standards should be specifically applicable to P, and any or all of those standards are not specified in regulations made by the Welsh Ministers under section 26(1), the standards report must set out the standards that are not specified.
115. The Commissioner must send a copy of the standards report to those listed in subsection (4)(a), and is permitted to send a copy of the report to any other person whom the Commissioner considers to have an interest in the report.

### ***Section 65 – Direction to carry out standards investigation***

116. Where Welsh Ministers exercise their power under section 16 (see Part 2) to direct the Commissioner to carry out a standards investigation in respect of a person or a group of persons, the direction must specify the matters listed in paragraphs (a) to (d) of subsection (2).

### ***Section 66 – Welsh Minister to have due regard to report***

117. Where the Commissioner has carried out a standards investigation and produced a standards report, Welsh Ministers must have due regard to the standards report in deciding whether, and how, to exercise the powers conferred on them by this Part of the Measure.

### ***Section 67 – Exception for broadcasting***

118. This section provides that the Measure does not require and does not authorise a person to require a person to comply with a standard if, and to the extent that, the standard relates to broadcasting.

119. Subsection (2) defines “broadcasting” for the purpose of this section.

### ***Section 68 – Codes of practice***

120. This section provides the Commissioner with the power to issue a document intended to provide practical guidance (“standards code of practice”) with respect to the requirements of any standards specified by Welsh Ministers under section 26(1). Standards codes of practice produced under this section are subject to consultation requirements as well as the approval of the Welsh Ministers.

### ***Section 69 – Failure to comply with codes***

121. By virtue of this section, a person’s failure to comply with a provision of an approved code of practice does not render that person liable to enforcement action of any kind.

122. However, if any action is taken under the Measure in respect of a failure of a person (“P”) to comply with a standard (“the alleged standards failure”), a failure by P to comply with a relevant provision of an approved code of practice may be relied upon as tending to establish that P is liable for the alleged standards failure. Conversely, compliance with a relevant provision of an approved code of practice may be relied upon as tending to establish that P is not liable for the alleged standards failure.

### ***Section 70 – Interpretation***

123. This section provides that references to:

- a person being liable to be required to comply with standards are to be read in accordance with section 33;
- a person’s entry in the tables in Schedules 6 or 8 are to be read in accordance with section 34;
- a standard being potentially applicable to a person are to be read in accordance with sections 36 and 37;
- a standard being specifically applicable to a person are to be read in accordance with section 39.

124. Definitions are also provided for the tables in Schedules 5, 6, 7 and 8.

### ***Section 71 – Investigating failure to comply with standards etc***

125. The Commissioner may investigate whether a person (referred to in this Part as “D”) has failed to comply with a relevant requirement.

126. In this Part, a “relevant requirement” means any of the following:

- a duty to comply with a standard specified by the Welsh Ministers (see section 25);
- a requirement included in a decision notice by virtue of section 79 (explained below);
- an action plan (see sections 79 and 80, explained below);
- a requirement included in a decision notice by virtue of section 82 (explained below).

127. **Schedule 10** provides further details about investigations.

### ***Section 72 – Discontinuing an investigation***

128. The Commissioner may, at any time, discontinue an investigation undertaken under section 71. If an investigation is discontinued, the Commissioner must inform each interested person, and inform D of the reasons for reaching the decision.

### ***Section 73 – Determination of investigation***

129. Where the Commissioner does not discontinue an investigation, he or she must determine whether or not D has failed to comply with the relevant requirement (see section 71 above). In doing so, the Commissioner must:
- produce an investigation report (as defined by section 74), and provide each interested person with a copy; and
  - give D a decision notice, and give a copy to any other interested person.
130. In making a determination under this section, the Commissioner must comply with the requirements imposed by section 85 (consultation before final determination etc).

### ***Section 74 – Investigation reports***

131. An investigation report means a report on an investigation under section 71 which includes all of the following:
- the terms of reference of the investigation;
  - a summary of the evidence taken during the investigation;
  - the Commissioner's findings on the investigation;
  - the Commissioner's determination on whether or not D has complied with the relevant requirement;
  - a statement of whether the Commissioner is taking further action
  - if the Commissioner is taking further action, a statement of that action.
132. However the Commissioner may also include other matters in the report.

### ***Section 75 – Decision notices***

133. A decision notice means a notice stating the Commissioner's determination of whether or not D failed to comply with the relevant requirement (defined in section 71), although the Commissioner is not prevented from including other matters in the notice. Other sections within this Part of the Measure also require that the decision notice includes certain matters.

### ***Section 76 – No failure to comply with a relevant requirement***

134. Where the Commissioner determines that D has not failed to comply with a relevant requirement (defined in section 71) he or she can decide to take no further action or, alternatively, give recommendations or advice to D or any other person.
135. Subsection (4) provides that where the investigation that led to the determination of no failure to comply follows a complaint made by a person alleging a failure by D to comply with a standard (under section 93), the Commissioner must ensure that the decision notice provided to the person who made the complaint informs that person of the right to appeal against the Commissioner's determination. That right of appeal is to the Welsh Language Tribunal under section 99 on the ground that D did fail to comply with the relevant requirement.

136. Before making a final determination as to whether D has failed to comply with a relevant requirement the Commissioner must satisfy the requirements of section 85.

***Section 77 – Failure to comply with a relevant requirement***

137. This section lists the options available to the Commissioner where he or she has determined that D has failed to comply with a relevant requirement. The Commissioner may take no further action, or he or she may do one or more of the following under subsection (3):

- require D to prepare an action plan (for the purpose in section 79);
- require D to take steps (for the purpose in section 79);
- publicise D’s failure to comply;
- require D to publicise the failure to comply;
- impose a civil penalty on D.

138. Under subsection (4) the Commissioner is permitted to give recommendations or advice to D or any other person or, if D has failed to comply with a standard, to enter into a settlement agreement with D. D is not obliged to enter into such an agreement, but if D declines the Commissioner is permitted to exercise his or her powers under this section differently. The Commissioner must also satisfy the requirements of section 85.

***Section 78 – No imposed enforcement action***

139. If the Commissioner determines that D has failed to comply with the relevant requirement and decides not to take further action, or gives advice or recommendations or enters into a settlement agreement with D under section 77(4), the decision notice (defined in section 75) must give the Commissioner’s reasons for the decision. The Commissioner must also satisfy the requirements of section 85.

***Section 79 – Requirement to prepare action plan or take steps***

140. The purpose of the action plan and the steps is to prevent the continuation or repetition of D’s failure to comply with the relevant requirement.

141. If the Commissioner determines that D has failed to comply with a relevant requirement and requires D to prepare an action plan or to take steps, or both, then the decision notice must set out what the Commissioner requires D to do, the time limits involved, the consequences if D doesn’t comply with requirements in the notice, and must inform D of the right to appeal under section 95 (Appeals to the Tribunal).

***Section 80 – Action plans***

142. Where the Commissioner gives D a decision notice requiring the preparation of an action plan, this section allows the Commissioner to approve the first draft plan, or to require a revised draft plan where the draft is not adequate. The Commissioner may apply to a county court for an order requiring that a first draft plan or revised draft plan is given to him or her in accordance with the order.

143. An action plan comes into force—
- 6 weeks after a first or revised draft action plan is given to the Commissioner, (if the Commissioner does not issue a notice stating that the draft is not adequate and requiring a revised draft to be prepared, or does not apply to court for an order requiring a further revised draft plan to be prepared), or
  - if the Commissioner does apply to court for an order requiring a further revised draft plan to be prepared, upon the court declining to make that order.

144. An action plan may be varied by agreement between the Commissioner and the person who prepared it.

### ***Section 81 – Publicising the failure to comply***

145. This section explains what is meant when the Measure refers to the Commissioner or D publicising D's failure to comply.
146. The Commissioner publicises D's failure to comply by publishing a statement the D has failed to comply with the relevant requirement or publishing the investigation report in relation to the investigation of D, or both.
147. When D is required to publicise his or her failure to comply with the relevant requirements he or she is being required to publicise any or all of the following: a statement that D has failed to comply with the relevant requirement, the investigation report produced, or other information relating to D's failure to comply.

### ***Section 82 – Requiring the failure to comply to be publicised***

148. Where the Commissioner determines that D has failed to comply with a relevant requirement and decides either to publicise D's failure or require D to publicise the failure, the decision notice must set out what the Commissioner is to do or what the Commissioner requires D to do. In addition the decision notice must inform D of the consequences of not complying with a requirement in the notice and of D's right to appeal under section 95. The Commissioner must also satisfy the requirements of section 85.

### ***Section 83 – Civil penalties***

149. When determining whether to impose a civil penalty on any person, and the amount of any civil penalty, the Commissioner must have regard to the seriousness of the matter for which the penalty is being imposed, the circumstances of the person against whom the penalty is to be imposed, and the need to prevent the continuation or repetition of the failure to comply with a relevant requirement. The Commissioner is not prevented from having regard to other matters.
150. This section also sets the maximum amount of a civil penalty.

### ***Section 84 – Imposition of civil penalty***

151. If the Commissioner determines that D has failed to comply with a relevant requirement, and decides to impose a civil penalty, the decision notice must set out the civil penalty, how it may be paid, and the period (which must be a period of not less than 28 days) within which it must be paid. The notice must also inform D of the consequences if D does not pay it, and of D's right to appeal under section 95. The Commissioner must also satisfy the requirements of section 85.

### ***Section 85 – Consultation before final determination etc***

152. This section applies if the Commissioner conducts an investigation under section 71. Before finally determining whether or not D has failed to comply with the relevant requirement, the Commissioner must give each interested person notice of the Commissioner's proposed determination.
153. Before finally deciding what, if any, action to take, under subsection (3) the Commissioner must give each interested person notice of whether or not the Commissioner is proposing to take further action, notice of any proposed action, a statement of the reasons for proposing to take any such action, and copies of the draft decision notice the Commissioner is proposing to issue.



154. Before settling the investigation, the Commissioner must give each interested person a draft of the proposed investigation report and give D and any other interested person an opportunity to make representations about the determination or the proposed investigation report. D may also make representations about the proposals listed in subsection (3).
155. The Commissioner must have due regard to any representations made by D or any other interested person before doing anything to which the representations relate. The period for making representations is determined by the Commissioner but must not be less than 28 days.

### ***Section 86 – Consultation before final determination following an appeal***

156. This section applies if, following an appeal under sections 99 or 101, or following any further appeal, the Commissioner is directed by the Tribunal to determine under section 73 that D has failed to comply with a standard.
157. Before finally deciding what, if any, action to take based on the determination, the Commissioner must, in relation to each interested person, satisfy the requirements of subsections (2)(a) to (c).
158. Before settling the investigation report, the Commissioner must give each interested person a draft of the proposed investigation report and give D and any other interested person an opportunity to make representations. In the case of D, D may make representations about the proposals referred to in subsections (2) and (3) and in the case of any other interested person, they may make representations about the proposals referred to in subsection (3).
159. The Commissioner must have due regard to any representations made by D or any other interested person before doing anything to which the representations relate. The period for making representations is determined by the Commissioner but must not be less than 28 days.
160. An “interested person” in relation to an investigation by the Commissioner into whether D has failed to comply with a relevant requirement includes D and, where the investigation follows a complaint made under section 93, the person who made the complaint.

### ***Section 87 – When enforcement action takes effect***

161. This section sets out what happens if the Commissioner gives D a decision notice setting out the enforcement action the Commissioner has decided to take.
162. At the end of the 28 day period for making an appeal to the Tribunal under section 95, enforcement takes effect and D must prepare an action plan or take steps, publicise a failure to comply, or pay a civil penalty, as required by the decision notice, and the Commissioner may publicise D’s failure to comply.
163. However, if an appeal is made to the Tribunal, enforcement does not take effect until that appeal and any further appeal has been disposed of, and a further appeal may not be made, or may be made only with a Tribunal or a court’s permission.

### ***Section 88 – Failure to comply with requirement to take steps***

164. Where a decision notice requires D to take steps, this section allows the Commissioner to apply to a county court for an order requiring D to take those steps.
165. The Commissioner may apply to the court during a five year period beginning with the day when the decision notice was issued.

***Section 89 – Failure to comply with action plan***

166. Where D has prepared an action plan as required in the decision notice, this section allows the Commissioner to apply to a county court for an order requiring D to comply with the action plan.
167. The Commissioner may apply to the court during a five year period beginning with the day when the action plan comes into force.

***Section 90 – Failure to comply with requirement to publicise failure to comply***

168. Where a decision notice requires D to publicise a failure to comply, this section allows the Commissioner to apply to a county court for an order requiring D to publicise the failure as stated in the notice.
169. The Commissioner may apply to the court during a five year period beginning with the day when the decision notice was given.

***Section 91 – Settlement agreements***

170. This section explains what is meant when the Measure refers to a settlement agreement between the Commissioner and a person (referred to as “D”) in relation to D’s failure to comply with a standard.
171. A settlement agreement contains an undertaking by D:
- not to fail to comply with one or more standards;
  - to take particular action;
  - to refrain from taking particular action
- and an undertaking by the Commissioner not to take enforcement action in respect of the failure.
172. The settlement agreement may include other provision and may also be varied or terminated by agreement of the Commissioner and D. However, entering into a settlement agreement does not mean that D has admitted the failure.

***Section 92 – Failure to comply with settlement agreement***

173. The Commissioner is permitted to apply to a county court for an order requiring D to comply with a settlement agreement. The Commissioner may apply to the court during a five year period beginning with the day when the settlement agreement is entered into.

***Section 93 – Consideration of whether to investigate if conduct complained about***

174. The Commissioner is under a duty to consider whether to carry out an investigation under section 71 into whether D has failed to comply with a standard where a person (referred to as “P”) makes a valid complaint to the Commissioner about D’s conduct.
175. To be a valid complaint, the conditions in subsections (3) to (6) must be met. Even if the complaint is valid, the Commissioner is not under a duty to consider whether to carry out an investigation in the circumstances listed in subsection (7).
176. However, in circumstances where the complaint does not satisfy all of the conditions for a valid complaint, or where subsection (7) applies, the Commissioner has the discretion to consider whether to carry out the investigation.
177. Subsection (9) ensures that if a complaint is made under this section by a person acting on behalf of another, in the provisions of this Measure which relate to appeals or further appeals connected with the complaint, a reference to the person who made the complaint (including a case where that person is referred to as “P”) is to be read as a reference

to that other person (and not as a reference to the person who made the complaint on that other person's behalf).

### ***Section 94 – Notification if no investigation etc***

178. Where the Commissioner, having received a complaint from P under section 93, makes a decision that is a decision falling within any of the five cases listed below, the Commissioner is under a duty to notify P of the decision, the reasons for the decision and of the right to apply to the Tribunal under section 103 to review the decision.
- Case 1 is a case where a complaint which satisfies the conditions in section 93(3)-(6) is made and the Commissioner is under a duty to consider whether to carry out an investigation but decides not to carry out an investigation.
  - Case 2 is a case where the Commissioner is not under a duty to consider whether to carry out an investigation as the complaint is of a kind that falls within section 93(7) and the Commissioner makes the decision not to consider whether to carry out an investigation.
  - Case 3 is a case where a complaint is made and the Commissioner decides that the duty under section 93 to consider whether to carry out an investigation does not apply.
  - Case 4 is a case where a complaint is made and the duty under section 93 to consider whether to carry out an investigation of the alleged conduct does not apply and the Commissioner decides not to consider whether to carry out an investigation of the alleged conduct under section 93(8) or, having considered whether to carry out an investigation under that section, decides not to carry out the investigation.
  - Case 5 is a case where a complaint is made and the Commissioner having originally decided to carry out an investigation then decides to discontinue the investigation.

### ***Section 95 – Appeals to the Tribunal***

179. In circumstances where the Commissioner undertakes an investigation under section 71 and determines that D has failed to comply with a relevant requirement, section 95 provides D with a route of appeal to the Tribunal against that determination as well as against any enforcement action taken by the Commissioner in connection with D's failure to comply.
180. Ds appeal to the Tribunal on the grounds that there was no failure to comply with the relevant requirement is subject to subsection (3) which prevents D from appealing if the Commissioner's determination of a failure to comply is reached as a result of a direction given by the Tribunal following an appeal by P under section 99 or 101, or any further appeal. .
181. An appeal against any enforcement action taken by the Commissioner in connection with a failure to comply with a relevant requirement may be made on the grounds that the enforcement action is unreasonable or disproportionate.
182. D may appeal both against the determination of a failure to comply with a relevant requirement as well as against the enforcement action taken by the Commissioner. Appeals must be made within a period of 28 days beginning with the day on which the Commissioner gives D the decision notice required by section 73. The Tribunal may accept appeals after the 28 day period if D makes a written application and the Tribunal is satisfied that there is a good reason for the failure to appeal before the end of that period, and for the delay (if any) in applying for permission to appeal out of time.

### ***Section 96 – Powers of Tribunal on appeal***

183. This section sets out what the Tribunal may do in relation to the Commissioner’s determination or the Commissioner’s enforcement action. The Tribunal must notify D and the Commissioner of its decision on an appeal under section 95.
184. Any decision taken by the Tribunal relating to an appeal has the same effect and may be enforced in the same way as a determination of the Commissioner.

### ***Section 97 – Appeals from Tribunal***

185. Where the Tribunal has decided an appeal the Commissioner, D or, in cases where P has successfully applied to be added as a party to the Tribunal’s proceedings, P, may, with the permission of the Tribunal or High Court, appeal to the High Court on a question of law arising out of the Tribunal’s decision.
186. If the High Court finds that the Tribunal has made an error on a point of law, the High Court may set aside the decision of the Tribunal. If the case is set aside, the High Court must either remake the decision or remit the case to the Tribunal with directions for its reconsideration.
187. Subsections (4) and (5) make provision about the directions that the High Court may give to the Tribunal and the High Court’s powers when remaking a decision made by the Tribunal.
188. An application for permission to appeal must be made to the Tribunal or High Court within a period of 28 days beginning on the day when the Tribunal notified the person making the application of its decision on the appeal under section 95. The Tribunal or High Court have the discretion to allow appeals to be made after that period if they are satisfied that there is a good reason for the failure to apply for permission before the end of the 28 day period and, if there has been a delay in applying for permission to appeal out of time, for that delay.

### ***Section 98 – Commissioner’s duty on an appeal***

189. In circumstances where the Commissioner has investigated an alleged failure by D to comply with a standard following a complaint made by a person under section 93 and an appeal under section 95 or 97, or any further appeal, is made in relation to the investigation and P is not a party to those proceedings, the Commissioner must comply with the requirements set out in subsection (2).
190. Subsection (2) provides that the Commissioner must, as soon as is reasonably practicable after being informed, notify the person who has made the complaint of:
- the outcome of an appeal under section 95;
  - the fact that an appeal under section 97 (or any further appeal) has been made; and
  - the outcome of an appeal under section 97 (or any further appeal).

### ***Section 99 – Right of appeal by P***

191. This section provides a right to appeal to the Tribunal against a determination by the Commissioner of no failure to comply with a standard, following an investigation. That appeal is available only to a person (“P”) whose complaint under section 93 to the Commissioner about an alleged failure by a person (“D”) to comply with a standard led to the investigation that resulted in the subsequent determination of no failure to comply.
192. P may appeal on the grounds that D did fail to comply with a standard. Appeals must be made within a period of 28 days beginning with the day on which the Commissioner gives P the decision notice in relation to the investigation in accordance with the

requirements of section 73. The Tribunal may accept appeals after the 28 days if P makes a written application to it and if it is satisfied that there is a good reason for the failure to appeal before the end of that period, and for the delay (if any) in applying for permission to appeal out of time.

### ***Section 100 – Powers of Tribunal on appeal by P***

193. This section provides that, on an appeal under section 99, the Tribunal can either affirm or annul the Commissioner's determination. If the Tribunal annuls the Commissioner's determination, the Tribunal must direct the Commissioner to determine under section 73 that D has failed to comply with the standard.

### ***Section 101 – Appeals from Tribunal***

194. This section provides the Commissioner, P or, in cases where D has successfully applied to be added as a party to proceedings, D, with a route of appeal to the High Court on a point of law arising out of the Tribunal's decision following an appeal by P.
195. If the High Court finds that the Tribunal has made an error on a point of law, the High Court may set aside the decision of the Tribunal. If the case is set aside, the High Court must either remake the decision or remit the case to the Tribunal with directions for its reconsideration.
196. Subsections (4) and (5) make provision about the directions that the High Court may give to the Tribunal and the High Court's powers when remaking a decision made by the Tribunal.
197. An application for permission to appeal must be made to the Tribunal or High Court within a period of 28 days beginning on the day when the Tribunal notified the person making the application of its decision on the appeal under section 99. The Tribunal or High Court have the discretion to allow appeals to be made after that period if they are satisfied that there is a good reason for the failure to apply for permission before the end of the 28 day period and, if there has been a delay in applying for permission to appeal out of time, for that delay.

### ***Section 102 – Commissioner's duty on an appeal by P***

198. In circumstances where the Commissioner has investigated an alleged failure by D to comply with a standard following a complaint made by a person under section 93 and an appeal under section 99 or 101, or any further appeal, is made in relation to the investigation and D is not a party to those proceedings, the Commissioner must comply with the requirements set out in subsection (2).
199. Subsection (2) provides that the Commissioner must, as soon as is reasonably practicable after being informed, notify D of:
- the outcome of an appeal under section 99;
  - the fact that an appeal under section 101 (or any further appeal) has been made; and
  - the outcome of an appeal under section 101 (or any further appeal).

### ***Section 103 – P's right of review***

200. This section provides a person who has made a complaint under section 93 ("P"), with the right to apply to the Tribunal for the Tribunal to review a decision of the Commissioner which falls within any of the five cases specified in subsections (5) to (9).
- Case 1 is a case where a complaint which satisfies the conditions in section 93(3)-(6) is made and the Commissioner is under a duty to consider whether to carry out an investigation but decides not to carry out an investigation.

- Case 2 is a case where the Commissioner is not under a duty to consider whether to carry out an investigation as the complaint is of a kind that falls within section 93(7) and the Commissioner makes the decision not to consider whether to carry out an investigation.
  - Case 3 is a case where a complaint is made and the Commissioner decides that the duty under section 93 to consider whether to carry out an investigation does not apply.
  - Case 4 is a case where a complaint is made and the duty under section 93 to consider whether to carry out an investigation of the alleged conduct does not apply and the Commissioner decides not to consider whether to carry out an investigation of the alleged conduct under section 93(8) or, having considered whether to carry out an investigation under that section, decides not to carry out the investigation.
  - Case 5 is a case where a complaint is made and the Commissioner having originally decided to carry out an investigation then decides to discontinue the investigation.
201. To make an application, P must obtain the Tribunal's permission. Permission must be granted where the Tribunal considers that the application would have a reasonable prospect of success or there is some other compelling reason why the application should be heard.
202. The Tribunal must deal with an application for review as if it were an application for judicial review made to the High Court. However, on an application for review, the Tribunal can, under section 104 either affirm or annul the Commissioner's determination.
203. Applications for review must be made within a period of 28 days beginning with the day on which the Commissioner gives P notice of his or her decision under section 94. The Tribunal may accept applications after the 28 day period if P applies in writing and the Tribunal is satisfied that there is a good reason for the failure to appeal before the end of that period, and for the delay (if any) in applying for permission to appeal out of time.

#### ***Section 104 – Powers of Tribunal on review***

204. On an application for review this section provides that the Tribunal can either affirm or annul the Commissioner's determination. If the Tribunal annuls the Commissioner's determination, the Tribunal must remit the case to the Commissioner with directions for its reconsideration.

#### ***Section 105 – Appeals from Tribunal***

205. This section provides the Commissioner or P with a route of appeal to the High Court on a point of law arising out of the Tribunal's review of a decision made by the Commissioner which is a decision that falls within one of the five cases capable of review under section 103.
206. If the High Court finds that the Tribunal has made an error on a point of law, the High Court may set aside the decision of the Tribunal. If the case is set aside, the High Court must either remake the decision or remit the case to the Tribunal with directions for its reconsideration.
207. Subsections (4) and (5) make provision about the directions that the High Court may give to the Tribunal and the High Court's powers when remaking a decision made by the Tribunal.
208. An application for permission to appeal must be made to the Tribunal or High Court within a period of 28 days beginning on the day when the Tribunal notified the person making the application of its decision on the appeal under section 103. The Tribunal or High Court have the discretion to allow appeals to be made after that period if they

are satisfied that there is a good reason for the failure to apply for permission before the end of the 28 day period and, if there has been a delay in applying for permission to appeal out of time, for that delay.

### ***Section 106 – Right to apply to be added as a party to proceedings***

209. This section applies in two cases.
210. The first case is where:
- D makes an appeal to the Tribunal under section 95(2) against a determination by the Commissioner that D has failed to comply with a standard; and
  - that determination was made after an investigation that followed a complaint about D's conduct under section 93.
211. In this case the Tribunal must notify the person ("P") who made the complaint under section 93 that D has made the appeal and P may apply to the Tribunal to be added as a party to proceedings. Where P is added as a party, the Tribunal must notify P of its decision on appeal. P may, with the permission of the Tribunal or High Court, appeal to the High Court under section 97 on a question of law arising out of that decision.
212. The second case is where:
- P appeals to the Tribunal under section 99 against a determination by the Commissioner that D did not fail to comply with a standard; and
  - the determination was made after an investigation which followed a complaint by P about D's conduct under section 93.
213. In this case, the Tribunal must notify D that P has appealed under section 99 and D may apply to the Tribunal to be added as a party to proceedings. If D is added as a party, the Tribunal is under a duty to notify D of its decision on the appeal and D may, with permission, appeal to the High Court under section 101 on a question of law arising out of that decision.

### ***Section 107 – Obstruction and contempt***

214. If the Commissioner believes that:
- a person has obstructed him or her in carrying out his or her duties under this Part, or
  - in respect of an investigation under section 71, a person has acted in a manner that would be in contempt of court if the investigation were being dealt with by the High Court
- the Commissioner can issue a certificate to the High Court. The High Court may inquire into the matter. If it is satisfied that a person's actions would be in contempt of court, it may deal with that person as if that person had committed contempt in relation to the High Court.

### ***Section 108 – Enforcement policy document***

215. The Commissioner must produce an enforcement policy document setting out his or her intended approach to exercising the Commissioner's functions under this Part. The document and any amendments to it must be approved by the Welsh Ministers.
216. This section also makes provision about the availability of the document for inspection and about publicising those arrangements.

### ***Section 109 – Register of enforcement action***

217. The Commissioner must create and maintain an up to date register of all enforcement action undertaken by him or her. This section states what the register must include.
218. This section also makes provision about the availability of the register for inspection and about publicising those arrangements.

### ***Section 110 – Interpretation***

219. This section defines “enforcement action” and “interested person” for the purpose of Part 5.

### ***Section 111 – Application to Commissioner***

220. This section makes provision for an individual (referred to in the Measure and in this explanatory note as “P”) who considers that his or her freedom to undertake a Welsh communication with another individual (referred to in the Measure and in this explanatory note as “R”) has been interfered with by a third person (referred to in the Measure and in this explanatory note as “D”) to apply to the Commissioner to investigate the alleged interference. Subsection (3) sets out how the application should be submitted and subsections (4) and (5) specify the detail which must be included in the application.

### ***Section 112 – Welsh communications***

221. This section defines ‘Welsh communication’ as a communication carried out in the Welsh language between two individuals who are located in Wales and who wish to use the Welsh language with one another in undertaking the communication.

### ***Section 113 – Interference with freedom to use Welsh***

222. This section sets out what, for the purposes of this part of the Measure, is an interference with the freedom to use Welsh which the Commissioner can investigate. An interference can take a number of different forms and these different forms are described in subsections (2) to (8).

### **Case 1**

223. Subsection (2)(a) allows the Commissioner to investigate cases of interference in which D has indicated to P or R that they must not undertake a particular communication in Welsh that falls within the definition of a Welsh communication.
224. The effect of subsection (2)(b) is that the Commissioner will also be able to investigate instances where D, rather than indicating that a particular communication should not take place,
- has indicated more generally that Welsh should not be used, and
  - that D’s more general indication catches within it communications which fall within the definition of “Welsh communication”.
225. Subsection (2) is to be read with subsection (6), the purpose of which is to recognise that there are a number of different ways in which D could indicate to P and R that they should not undertake a particular communication or a category of communications. Subsection (6) makes it clear that giving an instruction is one such way, as is indicating that P or R will be subjected to a detriment (either imposed by D or by someone else) if they undertake the communication or category of communications. A further way is by D, or someone else at D’s instigation, subjecting P or R to a detriment in connection with them having undertaken the communication or category of communications.



226. Subsection (6) is not intended to be an exhaustive list of the ways in which D could indicate that P and R should not undertake a particular communication or a category of communications. The indication could be made in a different way which is not one of those listed.

## **Case 2**

227. Subsection (3)(a) allows the Commissioner to investigate cases of interference in which D has indicated that P or R will be subjected to a detriment (either imposed by D or by someone else) because they have undertaken a particular communication in Welsh that falls within the definition of a Welsh communication.
228. Subsection (3)(b) performs an equivalent role to subsection (2)(b) which has been explained above. It allows the Commissioner to investigate instances where D's threat that a detriment will be imposed relates to the use of Welsh more generally, but catches communications which fall within the definition of a Welsh communication.

## **Case 3**

229. Subsection (4)(a) allows the Commissioner to investigate cases of interference in which D, or someone acting at D's instigation, has already subjected P or R to a detriment because they have undertaken a particular communication in Welsh that falls within the definition of a Welsh communication.
230. Subsection (4)(b) performs an equivalent role to subsections (2)(b) and (3)(b) which have been explained above. It allows the Commissioner to investigate instances where D's (or someone else's at D's instigation) imposition of a detriment relates to the use of Welsh more generally, but catches communications which fall within the definition of Welsh communication.
231. Subsection (5) provides that in cases where more general indications catch communications which fall within the definition of Welsh communications, the Commissioner is only able to consider and reach a conclusion about D's action to the extent that it affects Welsh communications.
232. Subsection (6) has been explained above in the note dealing with subsection (2).
233. Subsection (7) provides that the Commissioner's power to investigate an indication by D that a communication in Welsh must not be undertaken or that a detriment will be imposed, is in no way dependent on D or anyone else having the ability to carry through what has been indicated.
234. Subsection (8) makes it clear that being intimidated, bullied, harassed or humiliated is being subjected to a detriment for the purposes of this section.

## ***Section 114 – Deciding whether to investigate***

235. Where an application is made under section 111 by P for the Commissioner to investigate an alleged interference, this section states that it is for the Commissioner to decide whether or not to investigate. Subsection (3) lists matters which the Commissioner must consider or may consider in making that decision.
236. The Commissioner must take into account the context in which the alleged interference has occurred, including any relationship which exists between D and P, or D and R. The Commissioner is a public authority subject to the Human Rights Act 1998 and therefore must not act in a way which is incompatible with rights in the European Convention on Human Rights (ECHR). Article 8 of the ECHR deals with the right to respect for private and family life.

237. However the Commissioner is not limited to considering only the matters listed in subsection (3) when deciding whether or not to investigate an alleged interference. There may be other factors which are relevant to his or her decision.
238. If the Commissioner decides to investigate, subsection (5) requires him or her to inform P and D of the decision to undertake the investigation and to give the “relevant information about investigations” (see below) to them. Should the Commissioner decide not to investigate the alleged interference he or she must inform P of the decision and the reason for it (subsection (6)).
239. Subsection (8) gives the meaning of ‘relevant information about investigations’.

### ***Section 115 – Investigations***

240. This section sets out what the Commissioner may do and must do if he or she decides to investigate the alleged interference.

### ***Section 116 – Discontinuing investigations***

241. This section allows the Commissioner to discontinue his or her investigation of the alleged interference at any time. Subsection (2) lists the steps the Commissioner must take if he or she decides to discontinue the investigation.

### ***Section 117 – Concluding investigations***

242. This section applies in circumstances where the Commissioner decides to investigate the alleged interference and does not discontinue the investigation. Subsection (2) requires the Commissioner to determine whether or not D has interfered with P’s freedom to undertake a Welsh communication, as defined in section 113. If the Commissioner decides that interference has occurred, he or she must give a view on the interference (including, but not limited to whether in his or her view the interference was justified (subsection (3))).
243. Before making any determination under subsection (2) or giving views under subsection (3) the Commissioner must inform D of the determination he or she is proposing to make and of the views he or she is proposing to give, and, so far as is practicable, the Commissioner must give D the opportunity to respond. As soon as practicable after the determination has been made the Commissioner is required to notify P and D of it.
244. Subsection (7) allows the Commissioner to give advice to P, D or any other person, about the alleged interference or any matter relating to it.

### ***Section 118 – Reports***

245. The Commissioner is not under a duty to produce a report when he or she concludes an investigation. If the Commissioner considers in a particular case that the appropriate action is to share his or her conclusions with P and D only, he or she is able to do that.
246. However, subsection (2) provides that the Commissioner may produce a report to be given to the Welsh Ministers on any application (not only ones which he or she has investigated) made to him or her under section 111, and on the action taken by him or her in response to that application. If such a report is produced, subsection (3) places a duty upon the Commissioner to give a copy to P and D.
247. Where the Commissioner has produced a report to the Welsh Ministers under subsection (2), subsection (4) allows the Commissioner to publish that report or, alternatively, another related document. He or she may publish a version of their report (for example, a summary version or one which anonymises the parties mentioned in it), or another document which relates to the report’s subject matter.

248. Subsections (5) to (8) set out the requirements which must be met in order for the Commissioner to publish any document under subsection (4). Both P and D must agree to the publication of a document or, if their agreement has not been obtained, the Commissioner must consider that publication is in the public interest. In considering whether it is in the public interest, the Commissioner must take account of the interests of P, D and any other appropriate person. If in any case the Commissioner decides that D did not interfere with the freedom to use Welsh as defined in section 113, the Commissioner is prohibited from identifying D in any document which he or she publishes under subsection (4).

### ***Section 119 – Annual report to Welsh Ministers***

249. This section lists the types of information relating to applications to investigate alleged interferences that must be included in the Commissioner’s annual report, required under section 18 of the Measure.
250. Subsection (1)(c) requires the Commissioner to give a view on the adequacy and effectiveness of the law in protecting the freedom of persons in Wales wishing to use the Welsh language with one another.
251. Subsection (2) lists the matters the Commissioner must consider in formulating a view for this purpose, although he or she is not limited to those matters.
252. Subsection (3) enables the Welsh Ministers to make provision about the reports in regulations.
253. The effect of subsection (4) is that if the Commissioner’s annual report referred to any cases in which he or she had decided that D did not interfere with the freedom to use Welsh as defined in section 113, the annual report must not identify D.

### ***Section 120 – The Welsh Language Tribunal***

254. This section establishes the Tribunal and provides that the Tribunal is to consist of a President, legally-qualified members and lay members. The Welsh Ministers must appoint the members of the Tribunal. Subsection (4) gives effect to Schedule 11 which makes further provision about the Tribunal.

### ***Section 121 – Composition for proceedings before Tribunal***

255. This section makes provision regarding the Tribunal’s composition to deal with proceedings. This section is subject to Tribunal Rules (see section 123).

### ***Section 122 – Hearings in public***

256. Tribunal proceedings are to be held in public subject to Tribunal Rules.

### ***Section 123 – Welsh Language Tribunal Rules***

257. This section requires the President to make rules (“Tribunal Rules”) governing the practice and procedure to be followed in the Tribunal, which are subject to the approval of the Welsh Ministers.

### ***Section 124 – Practice directions***

258. This section allows the President to give directions as to the practice and procedure of the Tribunal. Any directions given are subject to the approval of the Welsh Ministers unless they relate to the application or interpretation of the law or the making of decisions by members of the Tribunal.

***Section 125 – Guidance, advice and information***

259. This section allows the President to give guidance to other members of the Tribunal in relation to the exercise of their functions. Members of the Tribunal must have regard to any such guidance. The President may also give advice and information in respect of the Tribunal and its functions.

***Section 126 – Supplementary powers***

260. This section provides the Tribunal with the same powers, rights, privileges and authority as the High Court in relation to:

- the attendance and examination of witnesses;
- the production and inspection of documents; and,
- all other matter incidental to the Tribunal’s functions.

261. Subsection (4) gives the Tribunal a power to direct that a party or witness is to be examined under oath or affirmation. The Tribunal may administer any oath, or take any affirmation, that is necessary for that purpose.

***Section 127 – Staff, accommodation and other resources of Tribunal***

262. This section requires the Welsh Ministers to ensure that the Tribunal is provided with the appropriate level of staff, accommodation and financial and other resources to exercise its functions.

***Section 128 – Specially qualified advisers***

263. This section allows the President to appoint specially qualified advisers to provide assistance to the Tribunal.

***Section 129 – Seal***

264. The Tribunal is to have an official seal. Documents carrying the seal are to be received in evidence in England and Wales without further proof.

***Section 130 – Financial year***

265. This section defines the Tribunal’s financial year.

***Section 131 – Vacancy in the office of President***

266. In the event of vacancy in the office of President, this section makes provision allowing the Welsh Ministers to make appointments for the purpose of exercising the President’s functions.

***Section 132 – President’s annual report***

267. This section requires the President to produce an annual report on the Tribunal’s exercise of its functions during that financial year and lay it before the National Assembly for Wales. The President must comply with the National Assembly’s requirements relating to the form and laying of the report.

***Section 133 – Training etc for members of Tribunal***

268. This section places a duty upon the President to decide upon and maintain appropriate arrangements for the training, guidance and welfare of members of the Tribunal.

***Section 134 – Register of interests***

269. This section places a duty upon each relevant officer holder to create and maintain an up to date register of interests.

***Section 135 – Publication of registers of interests***

270. This section imposes duties on the Commissioner in respect of the inspection and availability of a relevant office holder’s register of interests.

***Section 136 – Conflicts of interest***

271. This section prevents a relevant office holder from exercising a function if he or she has a registrable interest (defined in section 139) which relates to the exercise of that function. Where the relevant office holder is prevented from exercising a function, this section provides for how the function must be delegated (if the Commissioner is unable to act) or for arrangements to be made for the function to be exercised by another (if the Deputy Commissioner is unable to act).

***Section 137 – Validity of acts***

272. The validity of an act of a relevant office holder is not affected by a failure to comply with provision of, or made under, this Chapter of Part 8 of the Measure.

***Section 138 – Regulations***

273. The Welsh Ministers may make regulations specifying what interests are registrable interests and to make other provision for the purposes of this Chapter of Part 8 of the Measure.

***Section 139 – Interpretation of this Chapter***

274. “Registrable interest” and “relevant office holder” are defined in this Chapter.

***Section 140 – Absolute privilege***

275. The publication of matters falling within paragraphs (a) to (e) of subsection (1) have a complete defence in law (called an “absolute privilege”) against a claim of defamation. The effect of absolute privilege is that persons publishing the matter are protected from any liability for defamation in the circumstances defined below:
- the publication of a matter by the Commissioner in the exercise of any of his or her functions;
  - the publication of a matter by a member of the Advisory Panel in the exercise of any of his or her functions;
  - the publication of a matter by a person in compliance with a requirement in a decision notice;
  - the publication, in a communication between the Commissioner and a protected person of a matter in connection with an inquiry or investigation;
  - the publication, in a communication between the complainant or person acting on behalf of the complainant and a representative with an investigation under Part 5 (Enforcement) or Part 6 (Freedom to use Welsh).
276. Subsection (2) provides that a reference to the Commissioner in this section includes the members of the Commissioner’s staff or any person acting on the Commissioner’s behalf or assisting in the exercise of the Commissioner’s functions.

***Section 141 – Interpretation of this Chapter***

277. This section provides a number of definitions for the purposes of interpreting section 140.

***Section 142 – Restrictions***

278. This Measure does not authorise or require the Commissioner to exercise a prescribed function which by virtue of an enactment is also exercisable by a prescribed person. For the purposes of this section “prescribed” means prescribed in an order made by the Welsh Ministers.

***Section 143 – Abolition of the Board and transfer of functions***

279. This section marks the beginning of the first stage of transition.
280. The Welsh Language Board is abolished and its functions under section 3 of the 1993 Act are transferred to the Commissioner. The functions of the Board under section 3 of the 1993 Act could be exercised by Welsh Ministers instead of or in addition to the functions being transferred to the Commissioner. This could be achieved by an order made under section 154 of this Measure.
281. The functions of the Board contained in Part 2 of the 1993 Act (Welsh language schemes) are transferred to the Commissioner.
282. This section also repeals certain provisions of the 1993 Act.

***Section 144 – Abolition of the Board’s general functions and replacement of schemes with standards***

283. This section marks the beginning of the second transitional period. It provides for the move from the Welsh language scheme regime (Part 2 of the 1993 Act) and the functions of the Board (section 3 of the 1993 Act) to the new standards regime provided for in this Measure.
284. This section abolishes the functions of the Board under section 3 of the 1993 Act, including those which have been transferred under section 143 during the first transitional phase.
285. Where a person comes within Part 2 of the 1993 Act, and then becomes subject to the new standards regime under section 25(1) of this Measure, Part 2 will no longer apply to it.
286. This section also repeals certain provisions of the 1993 Act.

***Section 145 – Replacement of Welsh language schemes with standards***

287. This section marks the end of the second transitional period which was commenced by section 144. The final stage begins as the final public body’s Welsh language scheme is replaced by the application of standards as provided for in section 25(1) of this Measure.
288. The section provides for the abolishment of the Board’s functions under Part 2 of the 1993 Act, which are exercised by the Commissioner or the Welsh Ministers under section 143. This provision is to be commenced only when all existing Welsh language schemes have been replaced by the application of standards as provided for in this Measure.
289. This section also repeals certain provisions of the 1993 Act.

### ***Section 146 – Other provision***

290. This section introduces Schedule 12 to the Measure which contains other provisions relating to the abolition of the Board.

### ***Section 147 – Supplementary***

291. This section provides that the Welsh Ministers' powers under other Parts of the Measure:

- are not limited by this Part;
- may be used to enable the Commissioner to exercise the functions of the Board until the Commissioner's new functions, as conferred by this Measure, are commenced;
- may amend or replace the provisions in this Part.

292. The Welsh Ministers' powers under other Parts of the Measure include, but are not limited to, their powers in orders made under section 154 (transitional and consequential provisions etc), and orders under section 156 (commencement).

### ***Section 148 – Welsh Ministers to prepare an action plan***

293. This section amends section 78 of the Government of Wales Act 2006 so that Welsh Ministers are required to publish an action plan detailing their proposals for implementing their Welsh language strategy. Provision is also made for the timing of the publication of the plan.

### ***Section 149 – The Welsh Language Partnership Council***

294. This section places a duty on the Welsh Ministers to establish and maintain the Welsh Language Partnership Council ("the Partnership Council").

295. Subsection (2) provides that the Welsh Minister with responsibility for the Welsh language must chair the Partnership Council. Provision is also made in relation to its membership.

296. Subsection (3) provides that in appointing members to the Partnership Council, Welsh Ministers must have regard to the fact that it is desirable for the Partnership Council's membership to reflect the varying extent to which the Welsh language is used by those living in Wales.

297. The Partnership Council's procedures are to be regulated by standing orders made by the Welsh Ministers in consultation with the Partnership Council. Standing orders may make provision about who should chair the Partnership Council in the absence of the Welsh Minister with responsibility for the Welsh language.

298. Subsection (6) provides for the Partnership Council to give advice or make representations to the Welsh Ministers in relation to the Welsh language strategy, (including the plan setting out how the Welsh Ministers will implement the proposals set out in the strategy).

### ***Section 150 – Orders and regulations***

299. Any power of the Welsh Ministers to make an order or regulations under this Measure is exercisable by statutory instrument, the majority of which will be subject to the negative resolution procedure. The statutory instruments listed in subsection (2) must be made by affirmative procedure which means that the National Assembly for Wales has an opportunity to debate the matter and must approve the statutory instrument before it can be made. Statutory instruments to which the affirmative procedure applies include amongst others: orders amending Schedule 6 or 8, orders specifying standards, orders providing for the standards to be specifically applicable, orders altering the maximum

amount of civil penalty, orders which contain a provision amending, repealing or modifying an enactment, regulations making provision about the appointment of the Commissioner and orders altering the amount of public money specified in the Schedule 5 table.

300. The Welsh Ministers power to make an order or regulations under this Measure includes the power to:
- make different provision for different cases, different purposes or different geographical areas;
  - to make provision generally or in relation to specific cases; and
  - to make such transitional, transitory, consequential, saving, incidental and other provision as the Welsh Ministers think necessary or appropriate.
301. Where the Welsh Ministers have power under section 155(3) to commence a repeal of provisions of the Welsh Language 1993, they may provide for different commencement for different jurisdictions.
302. In this section “primary legislation” means an Act of Parliament, or a Measure or Act of the Assembly.

### ***Section 151 – Directions***

303. Directions given by Welsh Ministers under this Measure:
- may be varied or revoked by a later direction;
  - must be given in writing;
  - may make provision generally or in relation to specific cases; and
  - may make different provision for different cases, different purposes or different geographical areas.

### ***Section 152 – Notices etc***

304. This section makes provision in relation to notices and other documents required or authorised to be given under this Measure.

### ***Section 153 – Interpretation of this Measure***

305. This section provides definitions of certain terms used in the Measure.

### ***Section 154 – Transitional and consequential provision etc***

306. This section gives the Welsh Ministers the power to make such provisions as they think necessary or appropriate in connection with the Measure or to give full effect to it. This power is exercisable by order.
307. This includes a power to amend, repeal or modify an enactment in connection with the Measure or to give full effect to it.

### ***Section 155 – Extent***

308. Subject to subsection (3), the Measure extends to England and Wales only. Subsection (3) provides that a repeal of a provision of the Welsh Language Act 1993 has the same extent as the provision repealed.

### ***Section 156 – Commencement***

309. This section sets out the arrangements for commencing the provisions of the Measure.



### ***Section 157 – Short Title***

310. The short title for this Measure is the Welsh Language (Wales) Measure 2011.

### ***Schedule 1 – The Welsh Language Commissioner***

311. **Schedule 1** is introduced by section 2 of the Measure. Schedule 1 makes provision about the Commissioner’s status, appointment, and financial matters.

### ***Paragraph 1 – Status***

312. This paragraph makes provision regarding the Commissioner’s legal status. The Commissioner is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown, and that the Commissioner’s property is not to be regarded as property of, or property held on behalf, of the Crown. Subsection (4) places a duty on Welsh Ministers, when exercising functions in relation to the Commissioner, to have regard to specified matters relating to the Commissioner’s operational independence.

### ***Paragraph 2 – Validity of acts***

313. This paragraph ensures that the validity of acts undertaken by the Commissioner, or of a person exercising functions of the Commissioner, are not affected by a defect in the appointment of the Commissioner or any member of the Advisory Panel (or in the case of a person exercising functions on behalf the Commissioner, a defect in the appointment of that person).

### ***Paragraph 3 – Appointment***

314. This paragraph sets out the parameters within which the First Minister must operate in appointing the Commissioner.

### ***Paragraph 4 – Remuneration, allowances and pensions***

315. This paragraph allows the Welsh Ministers to pay remuneration, allowances, gratuities and pensions to the Commissioner, and amounts for or towards the pensions of persons who have been Commissioner.

### ***Paragraph 5 – Terms of appointment***

316. This paragraph ensures that the Commissioner holds office subject to the terms of his or her appointment, subject to the other provisions of Schedule 1. Sub-paragraph (3) requires the terms of the Commissioner’s appointment to provide for the Commissioner to hold office on a full-time basis.

### ***Paragraph 6 – Duration of appointment***

317. This paragraph provides that a person appointed as Commissioner holds office for a period of 7 years subject to the provisions in Part 3 of Schedule 1 which deal with disqualification, and the Commissioner’s resignation or dismissal from office.

### ***Paragraph 7 – Appointment regulations***

318. This paragraph requires the Welsh Ministers to make provision about the appointment of the Commissioner by regulations (“appointment regulations”).

### ***Paragraph 8 – Delegation of appointment functions etc***

319. This paragraph provides the First Minister with the power, by order, to delegate the function of appointing the Commissioner and any or all of his or her functions that relate to the Commissioner to the Welsh Ministers.

***Paragraph 9 – Resignation***

320. This paragraph allows the Commissioner to resign his or her post by giving written notice to the First Minister of not less than 3 months.

***Paragraph 10 – Disqualification***

321. A person ceases to be Commissioner if the person is disqualified from being Commissioner on grounds of employment.

***Paragraph 11 – Dismissal***

322. This paragraph provides the First Minister with the power to dismiss the Commissioner in certain circumstances.

***Paragraph 12 – Payments on ceasing to hold office***

323. This paragraph provides the Welsh Ministers with the discretion to make compensatory payment to a person who ceases to hold the office of Commissioner.

***Paragraph 13 – Disqualification from being Commissioner***

324. This paragraph provides that a person employed in one of the listed offices is disqualified from being Commissioner.

***Paragraph 14 – Payments by the Welsh Ministers***

325. This paragraph provides the Welsh Ministers with an express power to fund the Commissioner.

***Paragraph 15 – Financial year***

326. This paragraph makes provision about the Commissioner's financial year.

***Paragraph 16 – Accounting officer***

327. This paragraph makes provision about the Commissioner's responsibilities as accounting officer for the office of the Commissioner.
328. Subparagraph (5) provides the Public Accounts Committee of the National Assembly for Wales with the power, if requested to do so by the Committee of Public Accounts of the House of Commons ("the Parliamentary Committee"), to take evidence from the Commissioner on its behalf and to report on, and transmit, the evidence taken to the Parliamentary Committee.

***Paragraph 17 – Estimates***

329. This paragraph places a duty upon the Commissioner to prepare an estimate of the income and expenses of the Commissioner's office for each financial year other than the first, and submit the estimate to the Welsh Ministers. The Welsh Ministers, in turn, must examine the estimate submitted to them and lay that estimate before the National Assembly for Wales.

***Paragraph 18 – Accounts***

330. This paragraph places a duty upon the Commissioner to keep proper accounting records, and prepare accounts in respect of each financial year in accordance with directions given, with the consent of the Treasury, by the Welsh Ministers.

***Paragraph 19 – Audit***

331. This paragraph requires the Commissioner to submit the accounts prepared for a financial year to the Auditor General for Wales.
332. The paragraph also requires the Auditor General for Wales to examine, certify and report on each set of accounts submitted to him and lay them before the National Assembly for Wales.

***Paragraph 20 – Examinations into the use of resources***

333. This paragraph provides that the Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which resources have been used in discharging the Commissioner’s functions. In carrying out examinations under this paragraph, the Auditor General for Wales is not entitled to question the merits of the policy objectives of the Commissioner.

***Paragraph 21 – Interpretation***

334. This paragraph defines “appointment regulations” and “selection panel” for the purposes of this Schedule.

***Schedule 2 – Inquiries by the Commissioner***

335. [Schedule 2](#) is introduced by section 7 of the Measure and makes supplemental provision about the Commissioner’s powers of inquiry.

***Paragraph 1 – Introduction***

336. [Schedule 2](#) applies to inquiries that the Commissioner may undertake under section 7.

***Paragraph 2 to 5 – Terms of reference***

337. Before conducting an inquiry, the Commissioner must prepare its terms of reference.
338. In accordance with paragraph 3, where the terms of reference relate to a particular person or category of person, those terms of reference must specify that person or category of person. A person specified in terms of reference of an inquiry and each person who, in the Commissioner’s view, falls within a category of persons specified in terms of reference of an inquiry, are defined for the purposes of paragraph 3 as a “relevant person”.
339. Before settling the terms of reference under paragraph 3, the Commissioner must give each relevant person notice of the proposed terms and an opportunity to make representations about those terms. The Commissioner must consider any representations made by the relevant person.
340. After settling the terms of reference, the Commissioner must publish the terms of reference in accordance with the requirement imposed by paragraph 3 as well as give notice of the terms of reference to each relevant person and the Welsh Ministers.
341. Where the terms of reference do not relate to a particular person or category of person, paragraph 4 provides that the Commissioner must publish the terms of reference in accordance with the requirement imposed by paragraph 4(2)(a) as well as give notice of the terms of reference to the Welsh Ministers.
342. [Paragraph 5](#) provides that paragraph 3 or 4 applies to changes in the terms of reference as the paragraph would apply to the preparation of those terms.

### ***Paragraphs 6 and 7 – Representations***

343. In accordance with paragraph 6(1), the Commissioner must make arrangements for giving persons an opportunity to make representations in relation to inquiries.
344. Paragraph 6(2) provides that these arrangements must give the listed persons an opportunity to make representations in the course of an inquiry.
345. Paragraph 7(1) requires the Commissioner to consider representations made in relation to an inquiry by the persons listed.
346. The Commissioner must consider representations made by any other person in relation to an inquiry, unless the Commissioner thinks that it is appropriate to refuse to do so. Where the Commissioner refuses to consider representations he or she must give written notice to the person who made the representation of the decision to refuse to consider the representation made as well as the reasons for that decision.

### ***Paragraph 8 – Reports on inquiries***

347. The Commissioner must prepare a report of his or her findings on any inquiry and send a draft of the report to the Welsh Ministers, which must comply with the requirements of subparagraph (2). If the terms of reference specify a particular person or category of person, the Commissioner must also send a draft of the report to each relevant person (as defined by paragraph 3(5)).
348. The Commissioner is required to give the Welsh Ministers, and any other person to whom a draft of a report is sent, an opportunity to make representations about the report. The Commissioner must consider any representations made on the draft report and, having settled the report, must publish it.

### ***Schedule 3 – Amendments about joint and collaborative working***

349. Schedule 3 is introduced by section 21 in Part 2 of the Measure.
350. This Schedule makes amendments to the Care Standards Act 2000, Public Services Ombudsman (Wales) Act 2005, and the Commissioner for Older People (Wales) Act 2006 to make further provision about other commissioners and ombudsmen working jointly and collaboratively with the Welsh language Commissioner.

### ***Schedule 4 – Members of the Advisory Panel***

351. Schedule 4 is introduced by section 23 of the Measure and makes further provision about the appointment of the Advisory Panel's members, as well as associated financial matters.

### ***Paragraph 1 – Appointment***

352. This paragraph requires the Welsh Ministers to comply with appointment regulations (defined in paragraph 5) made by them. The Welsh Ministers are prevented from appointing a person to be a member of the Advisory Panel if that person is disqualified from appointment on grounds of employment. Those grounds are provided in paragraph 10.

### ***Paragraph 2 – Remuneration, allowances and pensions***

353. This paragraph allows the Welsh Ministers to pay remuneration, allowances, gratuities and pensions to members of the Advisory Panel, and amounts for or towards the pensions of persons who have been members.

***Paragraph 3 – Terms of appointment***

354. A member of the Advisory Panel holds office subject to the terms of his or her appointment, subject to the other provisions of this Schedule.

***Paragraph 4 – Duration of appointment***

355. This paragraph provides that a person appointed as a member of the Advisory Panel holds office for a period of 3 years, subject to the provisions in Part 2 of Schedule 4 which deal with disqualification, resignation or dismissal of members.

***Paragraph 5 – Appointment regulations***

356. The Welsh Ministers must make provision about the appointment of members of the Advisory Panel by regulations (“appointment regulations”).

***Paragraph 6 – Resignation***

357. This paragraph allows a member of the Advisory Panel to resign from office.

***Paragraph 7 – Disqualification from membership***

358. A person ceases to be a member of the Advisory Panel if disqualified from membership on grounds of employment (defined in paragraph 10).

***Paragraph 8 – Dismissal***

359. This paragraph provides the Welsh Ministers with the power to dismiss a member of the Advisory Panel in certain circumstances. Before exercising their power of dismissal, the Welsh Ministers must consult the Commissioner.

***Paragraph 9 – Payments on ceasing to hold office***

360. This paragraph provides the Welsh Ministers with the discretion to make a compensatory payment to a person who ceases to be a member of the Advisory Panel.

***Paragraph 10 – Disqualification on grounds of employment***

361. This paragraph provides that a person employed in one of the listed offices is disqualified from membership of the Advisory Panel on grounds of employment.

***Paragraph 11 – Interpretation***

362. This paragraph defines “appointment regulations” for the purposes of this Schedule.

***Schedule 5 – Categories of Persons that may be added to Schedule 6***

363. **Schedule 5** is introduced by section 33 of the Measure. The Welsh Ministers may make an order adding the persons or categories of persons listed in column (2) to the table in Schedule 6 (Public bodies etc: standards) so that those persons become capable of being required to comply with standards.
364. The Welsh Ministers may, by order, amend the monetary threshold referred to in entry (5) of the table (persons providing services to the public who receive public money) by replacing the relevant amount with any other amount that is not less than £400,000.
365. This Schedule defines “consent” for the purpose of entry (8) (persons who consent to being specified in Schedule 6) in the table, and states that consent may be withdrawn subject to the agreement of Welsh Ministers.
366. Definitions of “enactment”, “public authority” and “public money” are also provided for the purposes of this Schedule.

### ***Schedule 6 – Public bodies etc: standards***

367. Standards are defined in Chapter 2 of Part 4 of the Measure.
368. **Schedule 6** is introduced by section 33 of the Measure. The persons or category of persons listed in column (1) of the table are capable of being required to comply with the classes of standards listed within column (2) of the table. They are not under a duty to comply with a standard or standards until the Commissioner has issued them with a compliance notice under section 45 requiring them to do so.
369. Under section 35 the Welsh Ministers may make an order amending Schedule 6 by:
- adding to column (1) a person or category of persons from the table in Schedule 5 (categories of person that may be added to Schedule 6);
  - removing a person or category of person from column (1);
  - making other amendments in accordance with section 35.
370. Under section 38 Welsh Ministers may amend column (2) so that it includes or removes a reference to one of the following classes of standards: service delivery standards, policy making standards, operational standards, record-making standards.
371. Welsh Ministers may amend column (2) of the table to make the Welsh Minister, a county borough council, a county council or a national park authority capable of being required to comply with promotion standards.
372. Of the persons and categories listed in column (1), the entry of the table relating to government departments does not include anything that is within the entry relating to Ministers of the Crown, and the entry relating to persons exercising functions on behalf of the Crown does not include any person within any other entry.
373. Definitions are also provided for the purposes of this Schedule.

### ***Schedule 7 – Categories of Persons that may be added to Schedule 8***

374. **Schedule 7** is introduced by section 33 of the Measure. The Welsh Ministers may make an order adding the category of persons described in column (2) to the table in Schedule 8 (Other bodies: Standards) so that those persons are capable of being required to comply with standards relating to service delivery and record keeping, as provided in section 37.
375. The references in the table to related services do not include services provided in shops unless the services are:
- post office counter services, or
  - the sale of tickets or the provision of timetables for bus and railway services.
376. Definitions are provided of certain terms used in the Schedule.

### ***Schedule 8 – Other bodies: standards***

377. Standards are defined in Chapter 2 of Part 4 of the Measure and explained in the explanatory note above.
378. **Schedule 8** is introduced by section 33 of the Measure. The persons or category of persons listed in column (1) of the table are capable of being required to comply with standards relating to service delivery and record keeping, as provided in section 37, in respect of the services listed in column (2). The persons or category of persons are not under a duty to comply with a standard or standards until the Commissioner has issued them with a compliance notice under section 44 requiring them to do so.
379. Under section 35 the Welsh Ministers may make an order amending Schedule 8 by:

*These notes refer to the Welsh Language (Wales) Measure 2011 (c.1)*

- adding to column (1) a person or category of persons from the table in Schedule 7 (categories of person that may be added to Schedule 8)
  - removing a person or category of persons from column (1)
  - making other amendments in accordance with section 35.
380. The Welsh Ministers may amend column (2) so that it includes a reference to provision of a service only if certain conditions in section 35 are met. They also have the power to remove any references in column (2).
381. Expressions used in this Schedule have the same meaning as in Schedule 7, other than references which have been defined or given specific meaning for the purposes of this Schedule.

### ***Schedule 9 – Activities in relation to which service delivery standards must be specified***

382. **Schedule 9** is introduced by section 42 of the Measure. Welsh Ministers may make regulations under section 39 authorising the Commissioner to issue a compliance note requiring certain persons to comply with a standard. Where those regulations refer to a service delivery standard (defined in Chapter 2) section 42 provides that the standard must relate to all of the activities listed in Schedule 9 (so far as such standards have been specified by the Welsh Ministers under section 26(1)) if, and to the extent that, the person carries out those activities.

### ***Schedule 10 – Commissioner’s investigation of failure to comply with standards etc***

383. **Schedule 10** is introduced by section 71 in Part 5 of the Measure.

#### ***paragraph 1 – Introduction***

384. This Schedule applies to investigations conducted under section 71 of the Measure.

#### ***Paragraph 2 – Terms of reference***

385. This paragraph states that before conducting an investigation, the Commissioner must prepare the terms of reference which must specify the person who is being investigated, and the suspected failure to comply with a relevant requirement.
386. Before settling the terms of reference, the Commissioner must give certain persons notice of the proposed terms and an opportunity to make representations about them. The Commissioner must consider any representations made.
387. This paragraph makes provision for publishing the settled terms of reference and for giving notice of them to certain persons. This paragraph applies to the preparation of, and changes to, the terms of reference.

#### ***Paragraphs 3 and 4 – Representations***

388. **Paragraph 3** requires the Commissioner to make arrangements giving certain persons an opportunity to make representations, including oral representations, relating to investigations.
389. **Paragraph 4** requires the Commissioner to consider the representations made by the person being investigated or that person’s legal adviser. The Commissioner must consider representations made by any other person, unless the Commissioner considers it appropriate to refuse to do so. This paragraph defines legal advisers as being an authorised person under the Legal Services Act 2007, or an advocate or solicitor in Scotland.

### ***Paragraphs 5 and 6 – Evidence notices***

390. In the course of an investigation, the Commissioner may give a person (referred to as “A”) an evidence notice, which may require A to do one or more of the following: to provide information in A’s possession; to provide documents in A’s possession; or to give oral evidence. However A cannot be compelled to do anything that A could not be compelled to do if the proceedings were before a High Court.
391. The paragraph sets out what the notice may or must contain, including informing A of the consequences for not complying with the notice and of the right of appeal under paragraph 9.
392. If a person (referred to as “B”) provides information, documents or gives oral evidence, the Commissioner has the discretion to make payments for expenses properly incurred and allowances by way of compensation for loss of B’s time. Any such payments will be made in accordance with payment scales and conditions as may be determined by the Commissioner.

### ***Paragraphs 7 and 8 – Confidentiality etc***

393. An evidence notice given under paragraph 5 may not require a person to provide information which the person is prohibited from disclosing by virtue of an enactment and may not require a person to do anything that the person could not be compelled to do in proceedings before the High Court.
394. If A has been issued with an evidence notice, A must disregard it (and notify the Commissioner) if A believes that complying with the notice would require disclosing information classed as sensitive or other information relating to an intelligence service provided in subparagraphs (a) to (e).
395. Intelligence service means the Security service, the Secret Intelligence service, and the Government Communications Headquarters.
396. This paragraph also provides for what the Commissioner may do if notified by A that A is disregarding the notice.

### ***Paragraphs 9 and 10 – Appeals***

397. A may apply to the Welsh Language Tribunal to have the notice cancelled if A can show that a requirement imposed by the notice is unnecessary in relation to the purpose of the investigation or otherwise unreasonable or disproportionate.
398. If a requirement is undesirable for reasons of national security which are not provided for in paragraph 8(1), A may apply to the Tribunal to have the notice cancelled.

### ***Paragraph 11 – Enforcement***

399. If the Commissioner believes that A has failed, or is likely to fail, to comply with the notice without having a reasonable excuse, the Commissioner may apply to a county court for an order requiring A to take steps as specified in the order to comply with the notice.

### ***Paragraph 12 – Power of entry and inspection***

400. The Commissioner, or anyone authorised to act on his or her behalf, may enter and inspect a premises if the Commissioner thinks or the authorised person thinks it is necessary for the purpose of an investigation.
401. This power does not authorise entry to a dwelling, or to any premises that are not under the control of the person being investigated, nor does it authorise entry at a particular time if that time is unreasonable.



### ***Schedule 11 – The Welsh Language Tribunal***

402. **Schedule 11** is introduced by section 120 in Part 7 of the Measure. This Schedule makes further provision in relation to the Tribunal.

#### ***paragraph 1 – Legally-qualified members***

403. This paragraph provides that the Welsh Ministers must from time to time determine the number of legally-qualified members which the Tribunal is to have, having first consulted with the President. The Welsh Ministers must, so far as it is reasonable to do so, secure that the number of legally-qualified members appointed to the Tribunal is equal to the number determined by them.

#### ***Paragraph 2 – Lay members***

404. This paragraph provides that the Welsh Ministers must from time to time determine the number of lay members which the Tribunal is to have, having first consulted with the President. The Welsh Ministers must, so far as it is reasonable to do so, secure that the number of lay members appointed to the Tribunal is equal to the number determined by them.

#### ***Paragraph 3 – The President***

405. This paragraph makes provision regarding the eligibility of a person to be appointed as President.

#### ***Paragraph 4 – Legally-qualified members***

406. This paragraph makes provision regarding the eligibility of a person to be appointed as a legally-qualified member of the Tribunal.

#### ***Paragraph 5 – Lay members***

407. This paragraph makes provision regarding the eligibility of a person to be appointed as a lay member of the Tribunal.

#### ***Paragraph 6 – Remuneration etc***

408. The Welsh Ministers may pay remuneration, allowances, gratuities and pensions to members of the Tribunal.

#### ***Paragraph 7 – Terms of appointment***

409. A member of the Tribunal holds office in accordance with his or her terms of appointment, subject to the other provisions of this Schedule.

#### ***Paragraph 8 – Duration of appointment***

410. A person will be appointed to the Tribunal for a 5 year term with the discretion available to the Welsh Ministers to make shorter appointments.

#### ***Paragraph 9 – Appointment regulations***

411. The Welsh Ministers may make regulations in relation to the appointment of members of the Tribunal (“appointment regulations”).

#### ***Paragraph 10 – Resignation***

412. **Paragraph 10** makes provision for the resignation of Tribunal members.

***Paragraph 11 – Disqualification from membership***

413. This paragraph makes provision regarding the disqualification of persons from membership of the Tribunal.

***Paragraph 12 – Dismissal***

414. This paragraph makes provision about the dismissal of members of the Tribunal by the Welsh Ministers.

***Paragraph 13 – Disqualification from membership: employment***

415. This paragraph provides that a person employed in one of the listed offices is disqualified from membership of the Tribunal on grounds of employment.

***Paragraph 14 – Disqualification from membership: unsuitability***

416. This paragraph provides the grounds of unsuitability which will disqualify a person from membership of the Tribunal.

***Paragraph 15 – Disqualification from appointment: age***

417. A person is disqualified from appointment if he or she has already reached the age of 70 at the date of appointment.

***Paragraph 16 – Disqualification from appointment: previous appointment***

418. A person is disqualified from appointment as member of the Tribunal if they have already served a term of 10 years or more (whether in consecutive or non-consecutive appointments).

***Paragraph 17 – Disqualification from appointment: previous dismissal from office***

419. A person previously dismissed from the Tribunal by the Welsh Ministers under paragraph 12 may not be reappointed as a member.

***Paragraph 18 – Interpretation***

420. This paragraph defines “appointment regulations”.

***Schedule 12 – Abolition of the Welsh Language Board: other provision***

421. This Schedule is introduced by section 146 of the Measure.

***Paragraph 1 – Staff of the Board***

422. The Welsh Ministers have the power make an order transferring the Board’s staff to the Commissioner or the Welsh Assembly Government. For the purposes of paragraph 1, subparagraph (9) uses the term “transferee” to refer to the employer to whom the Board staff member will or would be transferred.
423. Where staff are transferred by order made by the Welsh Ministers under subparagraph (1), subparagraphs (2) to (9) make provision about the effect of the transfer upon the employment contracts of transferring staff.
424. The employment contracts of staff that transfer to the transferee as a result of an order made in accordance with this paragraph will not be terminated by the transfer and will have effect from the date of transfer as if originally made between the transferred member of staff and the transferee. All rights, powers, duties and liabilities of the Board in relation to the transferred staff member’s contract of employment will transfer to the transferee on the date of transfer. Similarly, anything done before the date of transfer by or in relation to the Board in respect of the transferring member of staff or their contract

of employment will be treated from the date of transfer as having been done by or in relation to the transferee.

425. A transferring person's period of employment with the Board immediately prior to the transfer date will count as a period of employment as a member of staff of the transferee. In addition, for the purposes of section 218(3) of the Employment Rights Act 1996, the transferring person's period of employment with the Board immediately prior to the transfer date will be treated as continuous employment as a member of staff of the transferee.
426. A contract of employment of a member of the Board's staff is not transferred under this paragraph if the employee objects to the transfer. That staff member's contract of employment will be terminated immediately before the date that the transfer to the transferee would occur but the employee whose contract is terminated is not treated for any purpose as having been dismissed by the Board.

### ***Paragraph 2 – Property, rights and liabilities of the Board***

427. The Welsh Ministers have the power to make an order about the property, rights and liabilities of the Board. This includes the power to transfer the property, rights and liabilities to the Commissioner or the Welsh Ministers. Definitions of "property" and "rights and liabilities" are also provided.

### ***Paragraph 3 – Modification of the 1993 Act in relation to functions transferred to Welsh Ministers***

428. In circumstances where the Board's functions under section 3 of the Welsh Language Act 1993 ("1993 Act") are transferred to the Welsh Ministers (see section 143(3)), this paragraph provides a list of those provisions of the 1993 Act which do not apply to those transferred functions as they are exercisable by the Welsh Ministers.

### ***Paragraph 4 – References to the Board***

429. This paragraph makes provision for interpreting references to the Board contained in the 1993 Act following the Board's abolition under the Measure. References to the Board in the 1993 Act that relate to a function of the Board that is transferred to the Commissioner should be interpreted, as a result of this paragraph, as being, or including, a reference to the Commissioner. Similarly, references in the 1993 Act to the Board that relate to a function of the Board that has been transferred to the Welsh Ministers should be interpreted as being, or including, a reference to the Welsh Ministers.

### ***Paragraph 5 – Continuation of legal proceedings, validity of acts etc***

430. This paragraph makes provision about the continuation of anything (including legal proceedings) which relates to a function of the Board transferred under the Measure to the Commissioner or Welsh Ministers (referred to collectively as "the transferee") that was in the process of being done by, or in relation to the Board, immediately prior to the time of the transfer of the function. With regard to such transferred functions, whatever was being done by, or in relation to, the Board immediately before the transfer may be continued by, or in relation to, the transferee.
431. Similar provision is made regarding any instruments, contracts or legal proceedings that relates to a function of the Board which transfers to the transferee under the Measure. In any such instruments, contracts or legal proceedings made or commenced before the time of the transfer of the Board function, the transferee is substituted for the Board.
432. In addition, anything which was done by, or in relation to the Board for the purpose of, or in connection with, a function transferred from the Board to the transferee under this Measure and which is in effect immediately before the transfer of the function has effect after the transfer as if done by, or in relation to the transferee.

433. **Paragraph 5** also addresses the continuation of anything (including legal proceedings) which relates to the Board's property, rights and liabilities transferred to the transferee under this Measure. Anything which relates to such property, rights and liabilities immediately before their transfer and which is in the process of being done by, or in relation to, the Board may be continued by, or in relation to, the transferee.
434. In addition, anything which was done by, or in relation to the Board for the purpose of, or in connection with, property, rights and liabilities transferred to the transferee under this Measure and which is in effect immediately before the transfer of the property, rights or liabilities has effect after the transfer as if done by, or in relation to the transferee.
435. Where the Board's property, rights or liabilities are transferred to the transferee, in any instruments, contracts or legal proceedings relating to the transferred property, rights or liabilities that are made or commenced before the transfer the transferee is substituted for the Board.
436. However the provisions in this paragraph do not apply in relation to rights and liabilities under the employment contracts of the staff of Board.

***Paragraph 6 – Interpretation***

437. This paragraph defines “1993 Act” and “Board” for the purpose of this Schedule.